IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

1. CIVIL WRIT No. 3146 of 1995

DEVI SINGH
V/S
STATE & ORS

2. CIVIL WRIT No. 3147 of 1995

VINOD KANWAR
V/S
STATE & ORS

Mr. SD VYAS, for the appellant / petitioner

Mr. BL BHATI, DY.G.A., for the respondent

Date of Order : 5.11.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

These two writ petitions arise in identical circumstances, though filed against different orders of the authorities below, but are closely interconnected, and therefore, they are being decided by this common order.

The petitioner Devi Singh, in Writ No. 3146/1995, and husband of Vinod Kanwar petitioner in Writ No. 3147, were real brothers, being sons of Narayan Singh. Vinod Kanwar has been brought on record as legal representatives of Hindu Singh brother of Devi Singh.

In this background the facts of the case are,

that the two persons Hindu Singh and Devi Singh were alloted land on 18.12.78 under different orders passed by the concerned authorities as landless persons. The two allotment orders are produced as Ex.1 in both the writ petitions respectively. The orders recite that the matter was talked publicly for allotment and applications were invited for allotment after reserving the land for Scheduled Castes and Scheduled Tribes, and the committee unanimously decided to allot the land to the two petitioners. Devi Singh is allotted 193 bighas and 18 biswa, and Hindu Singh is allotted 118 bighas and 1 biswa.

After this allotment an application was filed by the S.D.O. before the Collector contending interalia that the allottees were not landless persons inasmuch as allottee Devi Singh had 92 bighas 18 biswas land in his own name, and his father had 198 bighas 4 biswas of land, and the notional share in his father's land would come to 66 bighas, and thus he does not remain landless person, while against Hindu Singh the contention raised in the application was that his father had 198 bighas 4 biswas of land and his notional share therein comes to 66 bighas, and therefore, he also is not landless person.

Learned Collector in Devi Singh's case found that in 1978 though it is not established that at the time of allotment he was having 92 bighas 18 biswas of land as

alleged but Devi Singh was not a landless person and also found that notional share in his father's land would come to 66 bighas of land. Likewise in Hindu Singh's case also it was found that his notional share would come to 66 bighas of land. These findings have been affirmed by the learned Board of Revenue in the impugned judgments filed in both the writ petitions as Annexure-7 respectively.

Assailing the impugned orders, it is contended that as a matter of fact partition had not taken place even between sons of Jugat Singh, the father of Narayan Singh, and Narayan Singh's land was considered to be notional share, while as pleaded in the writ petition, that Jugat Singh had three sons, and had left the widow, thus Narayan Singh's notional share would be 1/4th in Jugat Singh's land, who had around 600 bighas of land only, and Narayan Singh's wife is also entitled to share in the property, and if the calculations are so made, the petitioners' share fall below 50 bighas, and therefore, they very much fall within the definition of landless person.

In my view, the contention cannot be accepted, inasmuch as a look at the orders of the learned courts below, and even the memo of appeal filed before the Board of Revenue, does show, that it was nowhere the controversy raised about extent of the notional share of Narayan Singh, rather it appears that it was sought to be contended that

in Narayan Singh's land his mother had equal share. However, Narayan Singh's notional share being 197 bighas has not been disputed on the side of the petitioners.

In my view, when even according to the petitioners Narayan Singh were three brothers, being sons of Jugat Singh, and Jugat Singh had left the widow, therefore, the question of her notional share was relevant to be considered only in the property of Jugat Singh, and since the notional share of Narayan Singh is not in dispute, it cannot be said that Narayan Singh's mother had any further notional share in Narayan Singh's property. So far as Narayan Singh's wife is concerned, during life time of Narayan Singh she cannot be held to be entitled for any notional share in the property.

That being the position, the fact does remain that Narayan Singh's property comprised of only three shares which definitely come to a figure above the limits prescribed in the definition of the person to be landless person.

Thus, I do not find any force in these writ petitions. The same are, therefore, dismissed.

(N P GUPTA),J.

/Sushil/